

## **PUBLIC MEETING MINUTES**

February 11, 2010

PUBLIC EMPLOYMENT RELATIONS BOARD  
1031 18th Street  
Sacramento, CA 95811

Acting Chair Dowdin Calvillo called the meeting to order at 10:05 a.m.

### **Members Present**

Alice Dowdin Calvillo, Acting Chair  
Sally M. McKeag, Member  
Karen L. Neuwald, Member  
Robin W. Wesley, Member

### **Staff Present**

Tami Bogert, General Counsel  
Les Chisholm, Division Chief, Office of the General Counsel  
Bernard McMonigle, Chief Administrative Law Judge  
Eileen Potter, Chief Administrative Officer

### **Call to Order**

After establishing that a quorum had been reached for the purposes of the February 11, 2010 public meeting, Acting Chair Dowdin Calvillo called the Public Employment Relations Board (PERB or Board) to order for a return to the open session of the December 10, 2009 Board meeting. She reported that the Board met in continuous closed session to deliberate on pending cases on the Board's docket, pending requests for injunctive relief, and pending litigation, as appropriate.

Acting Chair Dowdin Calvillo read into the record the decisions that issued since the open session in December. Those were PERB Decision Nos. 2084-H, 2085-S, 2086, 2087, 2066a-M, 2088-S, 2089-S, 2090-M, 2091, 2092, 2093, 2094, 2095, 2096, 2097-M and Administrative Appeal Order No. Ad-382. Acting Chair Dowdin Calvillo also noted that one request for injunctive relief was filed with PERB, but no determination was made because the request was withdrawn. A document containing a listing of the aforementioned decisions was made available at the meeting.

Without objection, Acting Chair Dowdin Calvillo adjourned the December 10, 2009 public meeting. She then opened and called to order the February 11, 2010 public meeting. Member McKeag led in the Pledge of Allegiance to the Flag.

### **Minutes**

**Motion:** Motion by Member Wesley and seconded by Member Neuwald that the Board adopt the minutes for the December 10, 2009 public meeting.

**Ayes:** McKeag, Neuwald, Wesley, and Acting Chair Dowdin Calvillo.

**Motion Adopted – 4 to 0.**

Before opening the floor to public comment, Acting Chair Dowdin Calvillo made a brief announcement that Member Neuwald will be retiring effective March 1, 2010. Member Neuwald has served the Board for the past four-and-one-half years and has brought an outstanding and tremendous service to PERB and its constituents. Ms. Dowdin Calvillo stated she not only had the pleasure of working with Member Neuwald on the Board, but also in the mid-1990s she had the opportunity to work with her on legislative issues at the State Capitol.

Acting Chair Dowdin Calvillo opened the floor to Member Neuwald for her departing remarks. Member Neuwald stated that leaving PERB was bittersweet and although she thoroughly enjoyed working at PERB, she was looking forward to retirement. She first acknowledged and thanked Governor Arnold Schwarzenegger for her appointment to PERB. She then stated that serving as a Board Member and also as Chair of PERB, she enjoyed the policy-making aspects of her job as well as interacting and learning how PERB was perceived by the Legislature.

Member Neuwald commended PERB staff for their diligent work in putting on two well-received PERB conferences in past years, one spearheaded by then Chair John Duncan and the other spearheaded by herself held in Irvine, CA. She also thanked Chief Administrative Law Judge Bernard McMonigle for his specialized assistance not only when she first started on the Board, but also during her entire tenure at PERB. She acknowledged and thanked General Counsel Tami Bogert and Chief Administrative Officer Eileen Potter for their assistance and fiscal expertise during these tough budget times and also thanked Ms. Potter's staff for their assistance. Member Neuwald highly commended her Administrative Assistants Irma Rosado and Regina Keith on their excellent work throughout her tenure at PERB. She also recognized and thanked Administrative Assistants Chris Wong and Teresa Stewart for their assistance and always stepping up to the plate on any last-minute requests made by the Board.

Member Neuwald stated that she truly respected her colleagues and worked extremely well together with them. Her past Legal Advisor Heather Glick and present Legal Advisor Dorothy Egel were commended for their excellent legal assistance. She also acknowledged and thanked Legal Advisors Greg Lyall and Erich Shiners for their collaborative legal assistance during paneled case discussions. A special acknowledgement went out to Administrative Law Judge Christine Bologna who hired Member Neuwald 25 years ago at the Department of Personnel Administration. She attributed that job opportunity as opening the doors to the policy-making arena, which she said helped in her appointment to PERB. In closing, Member Neuwald stated

that she had the pleasure of working in a management setting with public-sector workers for 28 years as colleagues and coworkers, and that the State workforce is the ultimate of all professionalism. She gave recognition to the full PERB staff as people who took great pride in their jobs and who diligently came to work each day, even through the tough budget times.

Member McKeag stated, through Member Neuwald's extensive service and background in State government, she has benefited greatly from her knowledge and expertise while on the Board. Ms. McKeag also stated that Member Neuwald offered unique insights into labor relations and, from the Board's perspective, PERB will not only be losing an invaluable resource but also a very collegial colleague, a good friend, and the ultimate professional.

Member Wesley echoed her colleague's sentiments and agreed that Member Neuwald's insight and experience had been an invaluable resource to PERB. She will miss her humor and the interaction shared with her on paneled case discussions. Member Wesley stated she was honored to serve on the Board with Member Neuwald and she wished her well in her retirement and assured her that they will most likely cross paths again soon.

Acting Chair Dowdin Calvillo again acknowledged Member Neuwald for her service on the Board and also announced that a farewell luncheon for her will be forthcoming.

### **Comments From Public Participants**

Kevin Colburn, representing California Teachers Association (CTA), thanked Member Neuwald for her contributions to PERB and wished her well in her retirement. Mr. Greg Eddy, representing California Federation of Teachers, also thanked Member Neuwald for her service to PERB and echoed Mr. Colburn's sentiments as well.

Member Neuwald thanked the audience and stated that she thoroughly enjoyed the exchange of dialogue among all interested parties before and after each PERB public meeting. She also appreciated CTA's diligence in their consistent attendance to PERB public meetings and also to their showing of interest in PERB activities.

### **Staff Reports**

The following staff reports were received with the caveat that any matter requiring action by the Board and not included as an item in today's agenda would be scheduled for consideration at a subsequent meeting.

#### **a. Administrative Report**

Administrative Officer Eileen Potter did not have anything to report at this time.

b. Legal Report

General Counsel Tami Bogert reported that the monthly activity and litigation reports had been distributed to the Board for their review. From those reports, Ms. Bogert recapped in particular since the Board's last public meeting in December, the following information. With regard to monthly activities, Ms. Bogert reported during the months of December and January, 159 new cases were filed with PERB; 133 case investigations were completed; and a total of 35 informal settlement conferences were conducted by PERB staff. In the same two-month period, as Acting Chair Dowdin Calvillo reported earlier, one request for injunctive relief was filed with PERB and that request later was withdrawn from the charging party.

In terms of litigation, Ms. Bogert first reported on the case of *County of Riverside v. PERB*, which seeks to overturn PERB Decision No. 2030-M. In that decision the Board found the County unlawfully retaliated against an employee and ordered, among other things, rescission of the employee's termination and a make-whole remedy. PERB is currently compiling the administrative record for filing with the appellate court, and anticipates briefing to begin in May or June this year. This litigation is in the Fourth District Court of Appeal.

Ms. Bogert also noted that PERB last month filed its opposition briefs in the three Sacramento County cases pending in the Third District Court of Appeal. These are the three cases brought by the County of Sacramento regarding three Board decisions finding unlawful the County's discontinuation of a retirement benefit for certain County employees. With the filing of PERB's opposition briefs last month, PERB's briefing is complete in these cases.

Ms. Bogert's last note on litigation, which she stated occurred only recently and therefore is not referenced in the January litigation report, is a favorable ruling from the Fourth District Court of Appeal in the case of *Amalgamated Transit Union Local 1704 v. PERB*. The appellate court summarily denied the union's petition in this case, effectively affirming PERB Decision No. 1996-M. In that case, among other things, the Board found that Omnitrans retaliated against one union officer but not the other.

In closing, Ms. Bogert stated that it has truly been a privilege and pleasure working with Member Neuwald and she looked forward to continuing their spirited conversations in the near future.

Chief Administrative Law Judge Bernard McMonigle also thanked Member Neuwald for her service to PERB and the State of California. During her tenure at PERB, he observed how hard she worked and how she carried herself in a very professional manner. He said that she will be missed and he looked forward to their continuing friendship.

Mr. McMonigle reported on the activities of the Division of Administrative Law and stated a report had been distributed to the Board for their review. Mr. McMonigle summarized the activities of his Division by stating that in January, approximately 52 new cases had been assigned for formal hearing to the Division's six administrative law judges. He also reported

by the end of this calendar year, approximately 33 cases will issue. In regards to the distribution of cases, of the 52 new cases, 22 cases were assigned to the Los Angeles Regional Office, 15 cases to Sacramento Regional Office, and 15 cases to the Oakland Regional Office.

c. Legislative Report

Les Chisholm, Division Chief, Office of the General Counsel, also thanked Member Neuwald for all her hard work at PERB. He stated that her insights and the perspective she brought to the agency have been invaluable and will be missed.

Mr. Chisholm reported there was not much legislative activity affecting PERB at this time but one bill that PERB is currently monitoring is Assembly Bill 1665 (Swanson). That bill proposes to amend EERA section 3543.2 to require public school employers to give reasonable written notice of not less than 15 days to the exclusive representative of classified personnel of a public school employer's intent to make any change to matters within the scope of representation, including, but not necessarily limited to, start time. The bill would also require public school employers to provide a recognized employee organization with the opportunity to meet and confer with the public school employer. The bill has been assigned to committee but no activity at this time. Mr. Chisholm will continue to track the bill as well as other legislation introduced that may be of interest to PERB.

**Motion:** Motion by Member McKeag and seconded by Member Neuwald that the Administrative, Legal (including General Counsel and Chief Administrative Law Judge), and Legislative Reports be accepted and filed.

**Ayes:** Dowdin Calvillo, McKeag, Neuwald, and Wesley.

**Motion Adopted – 4 to 0.**

**Old Business**

None.

**New Business**

None.

**General Discussion**

Acting Chair Dowdin Calvillo announced that there being no further business, it would be appropriate to recess the meeting to continuous closed session and that the Board would meet in continuous closed session each business day beginning immediately upon the recess of the open portion of this meeting through April 8, 2010 when the Board will reconvene in Room 103, Headquarters Office of the Public Employment Relations Board. The purpose of these

closed sessions will be to deliberate on cases listed on the Board's Docket (Gov. Code sec. 11126(c)(3)), personnel (Gov. Code sec. 11126(a)), pending litigation (Gov. Code sec. 11126(e)(1)), and any pending requests for injunctive relief (Gov. Code sec. 11126(e)(2)(c)).

**Motion:** Motion by Member Neuwald and seconded by Member Wesley to recess the meeting to continuous closed session.

**Ayes:** Dowdin Calvillo, McKeag, Neuwald, and Wesley.

**Motion Adopted – 4 to 0.**

Respectfully submitted,

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Chris Wong, Administrative Assistant

APPROVED AT THE PUBLIC MEETING OF:

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Alice Dowdin Calvillo, Chair